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cont

conducting field visits to locate said credit impaired borrowers if no contact can be made within approximately 20 days of said payment due date; using on-line tracing services to locate said credit impaired borrowers that cannot be contacted through said field visits; reposessing said vehicles if payment has not been received after approximately 45 days from said payment due date.

29. (New) The method of claim 28 wherein said step of servicing said vehicle loans further comprises:

coordinating repossession of said vehicles; setting floor prices for said vehicles for auction; receiving proceeds from said auction of said vehicles; calculating and filing insurance claims on said default insurance; and disbursing proceeds from said auction and said insurance claims to said financial institutions.

REMARKS

Claims 1-21 were originally presented for examination and have been cancelled without prejudice. Claims 22-29 have been added. Claims 22-29 are now presented for examination.

In addition, Applicant has submitted factual evidence in the form of Addenda and exhibits to the Addenda. Addendum A is an Affidavit of Robert E. Sutton, the inventor of the above-identified application that includes exhibits that are documents relating to the issuance of loans, a Contract with Lyndon Property Insurance Company to provide GAP insurance for credit impaired borrowers, an Agreement with Mountain Bell Credit Union and an Agreement with CU Leasing Corporation, which all occurred prior to the critical date of June 29, 1999. See paragraphs 3 through 11 and 35 through 40 of the Affidavit of Robert E. Sutton and associated exhibits. Addendum B is the Affidavit of Roland Anderson. Addendum C is the Affidavit of Howard Klemmer. Affidavit D is a

series of communications indicating the unsatisfactory operation of the invention and modifications that were made to correct the unsatisfactory operation.

None of these activities constitute a public use or on-sale bar of the claimed invention since these were permitted activities under the experimental use exception. See MPEP 2133.03(e). The primary purpose of these activities was experimental in nature. See, City of Elizabeth v. American Nicholson Pavement Co., 97 U.S. 126 (1878). As indicated in the enclosed Affidavits, the issuance of actual loans was required to test the feasibility of the process of claim 22. The feasibility of the process of claim 22 is dependent upon the default rate. Hence, actual default data was necessary to determine if the process of claim 22 was feasible.

Such a process of issuing default insurance on a loan-by-loan basis to insure financial institutions for defaults by credit impaired borrowers on vehicle loans, as set forth in claim 22, had never before been tried and no data was available to determine if such a process could or would work. See paragraph 21 of the Affidavit of Robert E. Sutton and paragraph 7 of the Affidavit of Roland Anderson. Mr. Robert E. Sutton is the inventor of the present application and is the CEO/Chairman of Centrix Financial, LLC, which is the exclusive licensee of the present invention. See paragraphs 1 and 2 of the Affidavit of Robert E. Sutton. Mr. Robert E. Sutton discussed the feasibility of providing GAP insurance in accordance with the process of claim 22 with Roland Anderson. Mr. Roland Anderson is currently an employee of Centrix Financial, LLC, but was the President of Lyndon Property Insurance Company at the time of this discussion. It was decided that Lyndon Property Insurance Company would cooperate with Centrix Financial, LLC in running a test. See Affidavit of Robert E. Sutton, paragraphs 41 through 44. The Agreement that was entered into with Lyndon Property Insurance Company was conditional in nature. First, the amount of the policy premiums was capped to a low amount for the first year, which extended beyond the critical date. See Affidavit of Robert E. Sutton, paragraphs 12 through 14 and the Affidavit of Roland Anderson, paragraphs 4-8. The cap was placed in the agreement because the parties mutually agreed that the first 12 months, which extended until August 1, 1999, after the critical date of June 29, 1999, was for testing purposes only. See Affidavit of Robert E. Sutton, paragraphs 15 through 24 and Affidavit of Roland Anderson, paragraphs 7, 8, 11,

12 and 14. In addition, the Agreement with Lyndon Property Insurance Company was terminable if the cap was exceeded. See Affidavit of Robert E. Sutton, paragraph 13 and Affidavit of Roland Anderson, paragraph 21.

The Agreements with the financial institutions were also conditional in nature. In order to effectively manage delinquency rates and loss ratios, which were the critical measurements of feasibility of the invention and to have the financial institutions agree to continued testing of the process, Centrix Financial, LLC agreed to buy back all of the loans of the financial institution if the default rate exceeded 1.5% of the loan balances. See Affidavit of Robert E. Sutton, paragraph 49.

Further, the Affidavits of Robert E. Sutton, Howard Klemmer and Roland Anderson each indicate that experimentation was necessary in order to determine if the process of claim 22 was feasible and could work. See Affidavits of Robert E. Sutton, paragraphs 3, 42 and 44, Roland Anderson, paragraphs 7, 8, 16 and 20 and Howard Klemmer, paragraphs 10, 12, 13, 17 and 23. Mr. Klemmer is the Manager of the Loan Management Group and Risk Management Department of Centrix Financial, LLC and has overseen the operations of Centrix Financial, LLC from its inception. These affidavits also establish that various modifications of the process of claim 22 had to be made both prior to and after the critical date as a result of the test results. See Affidavits of Robert E. Sutton, paragraphs 33 and 34, and Roland Anderson, paragraphs 17 through 19.

The agreements that were made with both Lyndon Property Insurance Company and the financial institutions, evidence the fact that any profit made was incidental to the overall purpose of testing. See Affidavits of Robert E. Sutton, paragraphs 43 and 44, and Roland Anderson, paragraphs 9 through 14. For example, limits were placed upon the dollar amount of premiums that could be issued with Lyndon Property Insurance Company, as indicated above. Also, buy-back provisions were instituted with the financial institutions so that the financial institutions could limit their risk. See Affidavit of Robert E. Sutton, paragraph 49. In addition, the arrangements with the financial institutions were established as "beta tests." For example, the Affidavits of Robert E. Sutton, paragraphs 45 through 56 and associated exhibits, and Howard Klemmer, paragraphs 8-10, provide documentary evidence indicating that the nature of the

arrangement with Mountain Bell Credit Union was a "beta test." For example, Exhibit G is a record of meeting notes between Centrix Financial, LLC and Mountain Bell Credit Union and Exhibit H is a Centrix Financial memorandum dated July 13, 2001. Both documents specifically state that the arrangements established between Centrix Financial, LLC and Mountain Bell Credit Union were a "beta test." Hence, the objective evidence clearly indicates that the subjective intent of the inventor was to test the process of claim 22 to determine if the process would work and that profit was not the motive during the first year, which extended until August 1, 1999, which was after the critical date.

Further, test data was collected and reviewed on a weekly basis by the inventor during the first year. See Affidavit of Robert E. Sutton, paragraph 58. Data was also collected by Lyndon Property Insurance Company. See Affidavit of Roland Anderson, paragraphs 15 and 22. Periodic meetings were held with Lyndon Property Insurance Company and the financial institutions to determine maximum default rates. See Affidavits of Robert E. Sutton, paragraphs 59 and 45 and Roland Anderson, paragraph 16.

Section 2133.03(e) of the MPEP indicates the factors that are indicative of an experimental purpose. The evidence submitted with this amendment clearly establishes each of those purposes. The nature of the invention was such that the testing had to be public to some extent. Actual default rates in live loan situations to credit impaired borrowers under the structure of this invention was required to determine the feasibility of the invention. See Affidavits of Robert E. Sutton, paragraphs 25 and 26, Howard Klemmer, paragraphs 9 through 12, and Roland Anderson, paragraphs 7, 12, 13, 14, 15 and 20. Further, the testing had to be performed over a period of time. Most defaults come within the first two years of a vehicle loan. See Affidavits of Robert E. Sutton, paragraphs 27 through 29 and Howard Klemmer, paragraphs 14 and 21. Hence, testing was required for at least one year and preferably two years to determine default rates so as to determine the feasibility of the invention. See Affidavit of Robert E. Sutton, paragraph 28 and Affidavit of Howard Klemmer, paragraphs 14 and 21. Also, testing was done under the supervision of the inventor. See paragraphs 15 and 16 of the Affidavit of Howard Klemmer. The inventor closely reviewed the data and personally authorized all changes that were made to the process, as evidenced by the Affidavit of

Robert E. Sutton, paragraphs 30 through 34 and Exhibit E. Also, see paragraph 16 of the Affidavit of Roland Anderson. As such, the inventor regularly inspected the operation of this invention during the period prior to the critical date of June 29, 1999. See Affidavits of Robert E. Sutton, paragraph 31, Howard Klemmer, paragraph 16, and Roland Anderson, paragraph 16.

Other factors indicating the experimental purpose were the conditional nature of sales associated with the experimental activity prior to the critical date. See Egbert v. Lippman, 105 U.S. 333 (1881). Termination provisions were included in the Agency Agreement between Centrix Financial, LLC and Lyndon Property Insurance Company that allowed for termination of the agreement if the cap was exceeded. See Affidavits of Robert E. Sutton, paragraph 13 and Roland Anderson, paragraph 21. Further, buy-back provisions were instituted during the experimental period in which Centrix Financial, LLC agreed to buy back the loans from the financial institutions if the default rate exceeded 1.5%. See Affidavit of Robert E. Sutton, paragraph 49.

In the Affidavit of Howard Klemmer, paragraphs 12 and 13, Mr. Klemmer points out that a statistically relevant number of loans was required to obtain a statistically relevant sample to evaluate default rates. Further, Mr. Klemmer states in paragraphs 14 and 21 that at least two years of testing is required since most defaults occur during the second year of the loan. See, International Tooth Crown Co. v. Gaylord, 140 U.S. 55 (1891). Mr. Klemmer points out in paragraphs 18, 19, 20, 22 and 23 of his affidavit that the number of loans placed within the first year of experimentation, that ended after the critical date of June 29, 1999, did not provide a statistically relevant sample to adequately evaluate the default rate. Further, explicit and implicit obligations were placed upon users of the invention to supply the inventor with the results of any testing conducted during the experimental period, as set forth in Monon Corp. v. Stoughton Trailers, 239 F. 3d 1253, 57 U.S.P.Q.2d 1699 (F. Cir. 2001); Robbins Company v. Lawrence Manufacturing Company, 178 U.S.P.Q. 577, 583 (9th Cir. 1973). In that regard, Lyndon Property Insurance Company kept accurate records of claim data that was periodically reported to Centrix Financial. See Affidavit of Roland Anderson, paragraphs 15, 16 and 22. In addition, Centrix Financial provided monthly reports to participating financial institutions and Lyndon Property Insurance Company. These reports provided

delinquency and default information as well as a complete listing of the loans in the portfolio for each financial institution. See Affidavits of Robert E. Sutton, paragraph 58, and Roland Anderson, paragraph 22.

Evidence has also been submitted that the inventor disclosed to the financial institutions what the inventor considered as unsatisfactory operation of the invention. See, In re: Dybel, 524 F.2d 1393, 1401, 187 U.S.P.Q. 593, 599 (C.C.P.A. 1975). For example, Addendum D is a series of communications indicating the unsatisfactory operation of the invention and modifications that must be made to the invention.

Hence, the enclosed evidence, in the form of the facts and exhibits presented in the affidavits, clearly establishes that activities prior to the critical date of June 29, 1999 were permitted activities under the experimental use doctrine.

In addition, the inventive concepts of claims 24-29 were not ready for patenting prior to June 29, 1999, the critical date, and were not publicly used or on-sale prior to June 29, 1999. See Affidavit of Robert E. Sutton, paragraph 57.

For these reasons, this application is considered to be in condition for allowance, and such action is earnestly solicited.

Dated this 11th day of April 2003.

Respectfully submitted,

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